



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

271 Cadman Plaza East

Brooklyn, New York 11201

EMN:SDD
F.#2013R00278

September 5, 2013

Via Fax and ECF

Honorable Vera M. Scanlon
United States Magistrate Judge
United States Courthouse
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Rex G. Maralit
Misc. No. 13-759 (VMS)

Dear Judge Scanlon:

The government respectfully writes to inform the Court of facts relevant to the Court's bail determination in connection with the above referenced case. The defendant Rex G. Maralit was arrested earlier this afternoon and is scheduled to appear before Your Honor tomorrow, September 6, 2013, at 11:00 a.m. As discussed further below, the defendant poses both a danger to others and a risk of flight, which justifies remand in this case.

I. Violations

On September 3, 2013, this Court issued a sealed arrest warrant for the defendant, Rex G. Maralit, along with two co-defendants, Ariel Maralit and Wilfredo Maralit, based on a complaint charging them with conspiring to: (a) violate the Arms Export Control Act, contrary to Title 22, United States Code, Section 2778(b)(2) and (c), by exporting firearms and firearm components from the United States to the Philippines without first obtaining a license from the U.S. State Department; and (b) engage in the business of dealing in firearms, without a license to do so, contrary to Title 18, United States Code, Section 922(a)(1)(A) and 924(a)(1)(D), all in violation of Title 18, United States Code, Section 371. The evidence set forth in the Complaint establishes that, between January 2009 and March 2013, the defendant provided multiple shipments of firearms and firearm components to coconspirators in the Philippines. Indeed, the defendant personally participated in obtaining these firearms, sometimes even demanding discounts from firearms dealers in the United States based on his status as a law enforcement officer.

II. Background

Detailed below is a proffer of certain evidence that the government will establish at trial. See United States v. LaFontaine, 210 F.3d 125, 130-31 (2d Cir. 2000) (government entitled to proceed by proffer in detention hearings); United States v. Ferranti, 66 F.3d 540, 542 (2d Cir. 1995) (same). See also United States v. Defede, 7 F. Supp. 2d 390, 393 (S.D.N.Y. 1998) ("The Bail Reform Act requires a hearing prior to the entry of a detention order [I]t now is clear in this Circuit that the government as well as the defendant 'may proceed by proffer,' which is implicit in the fact that the rules of evidence are inapplicable.") (citations omitted).

A. Rex G. Maralit

The defendant Rex G. Maralit is a naturalized U.S. citizen, who was born in the Philippines and has held a passport issued by the Philippines as recently as 2005. He is also a New York City Police Officer, assigned to police headquarters at One Police Plaza. The defendant has a residence in Lawrenceville, New Jersey, although his driver's license lists his address as Queens, New York. At the time of his arrest, the defendant was assigned to the EEO office of the New York City Police Department.

B. The Arms Export Control Act ("AECA")

Pursuant to AECA, Title 22, United States Code, Section 2778(b)(2), defense articles designated by the President of the United States on the United States Munitions List ("USMC") may not be exported without a license from the United States Department of State, Directorate of Defense Trade Controls ("DDTC"). In addition, pursuant to Title 22, Code of Federal Regulations, Section 120, et seq., the DDTC is responsible for the administration of the International Traffic in Arms Regulations ("ITAR") as they relate to the manufacture, brokering, import, export, and transfer of defense articles and defense services. Title 22, United States Code, Section 2778(c) provides criminal penalties for willful violations of Section 2778.

Category I of the USMC expressly applies to "Firearms, Close Assault Weapons and Combat Shotguns." See 22 C.F.R. § 121.1. Category I(a) of Section 121.1 pertains to "Nonautomatic and semi-automatic firearms to caliber .50 inclusive (12.7 mm)." Category I(c) of Section 121.1 pertains to "Firearms or other

weapons (e.g., insurgency-counterinsurgency, close assault weapons systems) having a special military application regardless of caliber." In addition, Category I(g) of Section 121.1 pertains to "Barrels, cylinders, receivers (frames) or complete breech mechanisms for the articles in paragraphs (a) through (d) of this category" and Category I(h) pertains to "Components, parts, accessories and attachments for the articles in paragraphs (a) through (g) of this category." Section 123.1 of the Code of Federal Regulations provides that "Any person who intends to export . . . a defense article must obtain the approval of the [DDTC] prior to the export or temporary import, unless the export or temporary import qualifies for an exemption under the provisions of this subchapter." 22 C.F.R. § 123.1(a).

C. Dealing in Firearms Requires a License from the Bureau of Alcohol, Tobacco, Firearms and Explosives

Title 18, United States Code, Section 922(a)(1)(A) prohibits dealing in firearms without first obtaining a Federal Firearms License from the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"). Based upon a review of ATF records, neither the defendant nor his criminal associates have ever possessed such a license.

D. The Investigation into International Arms Dealing

As set forth in detail in the Complaint, to date, the investigation has revealed that the defendant Rex G. Maralit and his brothers have been involved in acquiring firearms and firearm components for export to the Philippines in contravention of U.S. export control laws and federal firearms regulations. One of the defendant's brothers, Wilfredo Maralit, a Customs and Border Protection Officer, also was arrested in Los Angeles, California earlier today, and is expected to appear at the U.S. Courthouse in Santa Ana, California tomorrow for his initial presentment and removal to the Eastern District of New York.

The export scheme worked in the following manner. The defendant's other brother, Arial Maralit, emailed the defendant and Wilfredo Maralit customer orders for specific weapons from customers in the Philippines. The defendant and Wilfredo Maralit then scoured the internet for gun dealers and parts suppliers, and used their law enforcement credentials to obtain weapons and weapon components for export and resale in the Philippines. The coconspirators sent the guns and gun parts overseas in disguised packages, mislabeled as containing, for example, "industrial sliding door track."

In addition, the defendants often exchanged photographs via email, showing themselves with various weapons. Through court-authorized searches of the defendants' email accounts, agents identified numerous photographs of the defendants holding weapons, including multiple assault rifles. (See Attached Photographs, Exhibit A, Email Account Photos). As noted above, a review of government records indicates that none of the defendants possessed licenses from the United States government to export or deal in firearms.

The types of firearms exported by the defendant and his coconspirators include, but are not limited to, the following weapons, all of which fall within Category I of the USMC: a Barrett M82A1 .50 caliber semi-automatic rifle; FN SCAR 17 .308 caliber semi-automatic rifles; an LMT LM .308 caliber semi-automatic rifle; a Knights Armament SR-15 E3 short-barrel rifle; a Remington Model 700 .308 caliber SPS bolt-action rifle; a P.S.A. 5.56mm semi-automatic rifle; and 5.7mm FN Herstal semi-automatic pistols. These weapons are among the most powerful and deadly military style assault weapons available. For example, the Barrett .50 caliber rifle is a long-range weapon, favored by U.S. Special Forces and other military units for its ability to penetrate exterior walls, disable vehicles, and even potentially down aircraft. Similarly, FN 5.7mm pistols were designed as high-capacity battlefield weapons that are capable of firing rounds that can penetrate police body armor.

In addition, the defendant and his coconspirators exported various types of firearm components, including pistol barrels, upper and lower receivers for semi-automatic rifles and various ammunition magazines, including Barrett .50 caliber magazines, M4 5.56mm magazines and high-capacity PS90 5.7mm magazines, all in contravention of U.S. export laws.

E. Search of the Defendant's Residence

On September 5, 2013, agents executed a search warrant, issued by a United States Magistrate Judge in the District of New Jersey, on the defendant's family residence in Lawrenceville, New Jersey. During the search, agents discovered numerous firearms, including a loaded AK47 assault rifle, a loaded .44 Magnum revolver, and two other loaded handguns. Despite the presence of three children in the home, none of these loaded guns were secured under lock and key. Agents also found numerous other firearms, ammunition, firearms parts (including the frame for a Glock pistol), and a case of what appear to be smoke grenades. (See Attached Photographs, Exhibit B, Residential Search Photos). In addition, agents recovered what purports to be Philippines

Intelligence Officer credentials bearing the defendant's name, as well as shipping labels, and packaging materials. (See Attached Photograph, Exhibit C, Philippines Identification).

III. Discussion

Under the Bail Reform Act, 18 U.S.C. §§ 3141 et seq., the Court may order a defendant detained pending trial upon a determination that the defendant is either a danger to the community or a risk of flight. See 18 U.S.C. § 3142(e) (detention appropriate where "no condition or combination of conditions would reasonably assure the appearance of the person as required and the safety of any other person and the community"). A finding of dangerousness must be supported by clear and convincing evidence. A finding of risk of flight must be supported by a preponderance of the evidence. See United States v. Chimurenga, 760 F.2d 400, 405 (2d Cir. 1985).

The Bail Reform Act specifies four factors to be considered in the detention analysis: (1) the nature and circumstances of the crimes charged; (2) the history and characteristics of the defendant; (3) the seriousness of the danger posed by the defendant's release; and (4) the evidence of the defendant's guilt. See 18 U.S.C. § 3142(g).

First, international gun trafficking is an extremely serious crime, particularly when committed by a public servant with law enforcement authority. The complaint charges the defendant with repeatedly providing firearms, including assault rifles, sniper rifles and semi-automatic handguns, to coconspirators in the Philippines, during the time he was employed as a New York City Police Officer. If convicted of conspiring to export firearms or engage in unlicensed firearms dealing, the defendant would face up to 5 years in prison. In the likely event that the government charges the defendant with the substantive offense of violating the AECA, the defendant would face 20 years in prison, with a possible Guidelines range of 63 to 78 months' imprisonment. These stiff penalties create a strong incentive to flee.

Second, the defendant has significant ties to a foreign country. For example, he has a close relative (and coconspirator) who lives in the Philippines, and is in fact himself a naturalized U.S. citizen. In addition, travel records indicate that the defendant recently traveled to and from the Philippines. Moreover, it appears that he may have had ties to a government agency in the Philippines, and clearly possesses professional skills that would make capture difficult should he

choose to flee.

Third, the defendant poses a significant danger to the community if released. As described above, he has engaged in extensive illegal gun-dealing activity, and had accumulated a cache of dangerous weapons and munitions, some of which he stored in a loaded and unsafe condition despite the presence of children in the home. Illegal trafficking in firearms and unsafe handling of firearms clearly pose a grave threat to the community, both within the United States and abroad.

Finally, the evidence of the defendant's guilt is overwhelming, as indicated by the evidence outlined above and in the Complaint. Emails, photographs, shipping records, ATF firearms records, search warrant results, information provided by confidential sources and law enforcement testimony all provide overwhelming evidence of the defendant's commission of the charged offenses.

IV. Bail Analysis

Here, in order to secure the defendant's appearance and to protect others from the danger he presents to the public, remand is appropriate. To the extent that the Court considers a bail application from the defendant, such a bail package should include, at a minimum: multiple responsible suretors with demonstrated moral suasion over the defendant; the surrender of the defendant's passports (U.S. and from Philippines); travel restrictions to the Eastern and Southern Districts of New York and the District of New Jersey; substantial security in the form of equity in real property; and a strict prohibition that the defendant not possess or attempt to possess any firearms or other weapons. Absent such a substantial bail package, remand is appropriate in this case in light of the risk of flight and to protect the public.

